

Notice of Allowability

Application No.

10/661,356

Examiner

Anu Ramana

Applicant(s)

YETKINLER ET AL.

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the interview conducted on April 4, 2007.
2. ☒ The allowed claim(s) is/are 1-2, 6-7, 31, 35, 39 and 43-47.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Anu Ramana

EXAMINER'S AMENDMENT

An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment, which places this application in condition for allowance. During the interview conducted on April 4, 2007, the Attorney of Record, Bret E. Field, requested an extension of time for 1 MONTH(S) and authorized the Director to charge Deposit Account No. 50-0815 the required fee of \$60.00 for this extension and authorized the following examiner's amendment. See attached Interview Summary Form.

It is noted that the Terminal Disclaimer filed on April 9, 2007 has been approved and overcomes the double patenting rejection made in the previous office action.

COMMENT ON DRAWINGS

The following changes to the drawings have been approved by the examiner and agreed upon by applicant:

1. A replacement sheet for Figure 2 incorporating the details of Figure 6D into current Figure 2 to better illustrate Applicants' invention.
2. Formal drawings in accordance with 37 CFR 1.121(d) is required since the current figures appear to be informal.

In order to avoid abandonment of the application, applicant must make these above agreed upon drawing changes.

The application has been amended as follows:

In the Specification:

On page 3, line 2: replaced "6" with - - 6D - - to correct a minor typographical error.

On page 16, line 5: replaced "6" with - - 6D - - to correct a minor typographical error.

In the Claims (Amendment filed on 10/18/06):

In claim 1: deleted lines 2-12 and inserted the following text after line 1:

- - calcium phosphate cement paste composition to a cancellous bone target site, said method comprising:
 - positioning a holder in a recess of a vibration-generating element;
 - introducing a needle through the holder;
 - seating the needle in a countersunk recess in the holder;
 - positioning at a target bone site an end of the needle that is present in the holder of the vibration-generating element; and
 - delivering said flowable orthopedic calcium phosphate cement paste composition through said needle to the target bone site in conjunction with vibration so that said cement paste composition is vibrated during said delivering in a manner such that said vibration provides for controlled penetration of said cement paste composition into said cancellous bone without use of substantial pressure and penetration of said cement paste composition into said cancellous bone stops substantially simultaneously with cessation of said vibration. - -

In claim 31, line 1: replaced "11" with - - 7 - - to correct claim dependency.

In claim 35, line 1: replaced "34" with - - 1 - - to correct claim dependency.

In claim 35, line 2:

replaced "vibratory element (first occurrence)" with - - vibration-generating element - - for consistency.

In claim 39, line 1: replaced "38" with - - 1 - - to correct claim dependency.

In claim 39, line 2: inserted - - paste composition - - after "cement" for consistency.

In claim 43, line 1: replaced "36" with - - 1 - - to correct claim dependency.

In claim 43, line 2: inserted - - paste composition - - after "cement" for consistency.

In claim 44, line 2: inserted - - paste composition - - after "cement" for consistency.

In claim 45, line 2: inserted - - paste composition - - after "cement" for consistency.

In claim 46, line 2: inserted

- - paste - - after "cement" to correct a minor typographical error.

In claim 47, line 2: inserted - - paste - - after "cement" to correct a minor typographical error.

Canceled claims 8-9, 11, 32-34, 36-38, 40 and 41.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance.

The claims in the instant application have not been rejected using prior art because no references or a reasonable combination thereof, could be found which disclose or suggest a method of introducing a flowable orthopedic calcium phosphate cement paste composition to a cancellous bone target site, said method comprising: positioning a holder in a recess of a vibration-generating element; introducing a needle through the holder; seating the needle in a countersunk recess in the holder; positioning at a target bone site an end of the needle that is present in the holder of the vibration-generating element; and delivering the flowable orthopedic calcium phosphate cement paste composition through the needle to the target bone site in conjunction with vibration so that the cement paste composition is vibrated during said delivering in a manner such that the vibration provides for controlled penetration of the cement paste composition into the cancellous bone without use of substantial pressure and penetration of the cement paste composition into the cancellous bone stops substantially simultaneously with cessation of vibration as set forth in claim 1.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR
April 13, 2007



Anu Ramana
Patent Examiner
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